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266 NLRB No. 40

D--9666
Los Angeles, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

GOLD SEAL AUTO PARTS
EXCHANGE, INC.

and

Case 31--CA--11898

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS
DISTRICT LODGE NO. 94, LOCAL
LODGE NO. 1186, AFFILIATED WITH
INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE
WORKERS, AFL--CIO

DECISION AND ORDER

Upon a charge filed on February 11, 1982, and amended charges filed on March 10 and 12, 1982, by International Association of Machinists and Aerospace Workers District Lodge No. 94, Local Lodge No. 1186, affiliated with International Association of Machinists and Aerospace Workers, AFL--CIO, herein called the Union, and duly served on Gold Seal Auto Parts Exchange, Inc., herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Regional 31, issued a complaint on April 27, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and amended charges and the complaint and notice of

hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges that, on or about October 16 and December 17, 1981, January 18, 1982, and continuing thereafter, the Union has requested Respondent to bargain collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive bargaining representative of all the employees of Respondent in an appropriate unit. The complaint further alleges that on or about October 16, 1981, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain. Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

On November 18, 1982, counsel for the General Counsel filed directly with the Board a motion to transfer and continue the matter before the Board and a Motion for Summary Judgment, with exhibits attached. Subsequently, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent has not filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

> The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on Respondent specifically states that, unless an answer is filed to the complaint within 10 days from the service thereof, all of the allegations in the complaint ''shall be deemed to be admitted to be true and may be so found by the Board.''

Because Respondent has failed to file an answer to the complaint, the allegations of the complaint are deemed to be admitted and found to be true. Accordingly, we grant the General Counsel's Motion for Summary Judgment.

On the basis of the entire record, the Board makes the following:

Findings of Fact

I. The Business of Respondent

Respondent is now, and has been at all times material herein, a California corporation with an office and principal

place of business located in Los Angeles, California. At all relevant times Respondent has been engaged in the retail sale of automotive parts and the rebuilding and repair of automotive engines. In the course and conduct of its business operations, Respondent annually derives gross revenues in excess of $500,000; purchases and receives goods or services valued in excess of $2,000 from sellers or suppliers located within the State of California, which sellers or suppliers receive such goods in substantially the same form directly from outside the State of California; and utilizes instrumentalities of interstate commerce, such as telephone services, in excess of $2,000.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

International Association of Machinists and Aerospace Workers District Lodge No. 94, Local Lodge No. 1186, affiliated with International Association of Machinists and Aerospace Workers, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All automotive mechanics, machinists, and their apprentices and helpers employed by Respondent, excluding all office clerical employees, guards, all other employees and supervisors as defined in the Act.

On or about August 1, 1977, a majority of the employees in the unit described above designated or selected the Union as their representative for the purposes of collective bargaining with Respondent. At all times since that date, the Union has been the exclusive representative of the employees in said unit within the meaning of Section 9(a) of the Act. Respondent's recognition of the Union's status has been embodied in a series of collective-bargaining agreements, the most recent of which has an effective term of January 1 to December 31, 1981, and year to year thereafter.

Commencing on or about October 16, 1981, and continuing to date, and more particularly on October 16 and December 17, 1981, and January 18, 1982, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all employees in the above-described unit. On or about October 16, 1981, and at all times thereafter, Respondent has refused, and continues to refuse, to recognize and bargain collectively with the Union.

Accordingly, we find that Respondent has, since October 16, 1981, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal,

Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.[1]

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that Respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

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[1] Respondent apparently is a party to a bankruptcy proceeding in the United States Bankruptcy Court for the Central District of California. A ''Notice of Pendency of Unfair Labor Practices Litigation,'' addressed to the United States Trustee (if any), the trustee (if any), and all potential purchasers of the debtor's assets, was duly filed in the bankruptcy court. No trustee or other party has appeared in the instant proceeding.

Conclusions of Law

1. Gold Seal Auto Parts Exchange, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers District Lodge No. 94, Local Lodge No. 1186, affiliated with International Association of Machinists and Aerospace Workers, AFL--CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All automotive mechanics, machinists, and their apprentices and helpers employed by Respondent, excluding all office clerical employees, guards, all other employees and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since August 1, 1977, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about October 16, 1981, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Gold Seal Auto Parts Exchange, Inc., Los Angeles, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Association of Machinists and Aerospace Workers District Lodge No. 94, Local Lodge No. 1186, affiliated with International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All automotive mechanics, machinists, and their apprentices and helpers employed by Respondent, excluding all office clerical employees, guards, all other employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its facility in Los Angeles, California, copies of the attached notice marked ''Appendix.''[2] Copies of said notice, on forms provided by the Regional Director for Region 31, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

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[2] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(c) Notify the Regional Director for Region 31, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. February 15, 1983

Howard Jenkins, Jr., Member

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Association of Machinists and Aerospace Workers District Lodge No. 94, Local Lodge No. 1186, affiliated with International Association of Machinists and Aerospace Workers, AFL--CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All automotive mechanics, machinists, and their apprentices and helpers employed by the Employer, excluding all office clerical employees, guards, all other employees and supervisors as defined in the Act.

GOLD SEAL AUTO PARTS EXCHANGE, INC.

(Employer)

Dated ---------- By ----------
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 12100, 11000 Wilshire Boulevard, Los Angeles, California 90024, Telephone 213--209--7357.